

Honorable Donald Cox, Chairman
Honorable George Russell, Executive Director
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William H. May, III, Counsel
Patton-Henry for Kentucky Committee
P.O. Box 1371
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February 15, 1999

Honorable Donald L. Cox, Chairman
Honorable George Russell, Executive Director
Kentucky Registry of Election Finance
140 Walnut Street
Frankfort, Kentucky 40601

Re: Request for Advisory Opinion

Dear Messrs. Cox and Russell:

On January 25, 1999, the Patton-Henry for Kentucky Committee ("Committee") was established in conjunction with the filing of the Notification and Declaration of Paul E. Patton and Steve Henry for nomination to the offices of Governor and Lieutenant Governor. Also at this time the slate filed its Statement of Intent to Accept Transfers from the Election Campaign Fund and thereby subject itself to the campaign expenditure limitations established in KRS 121A.030. The following questions concern activity associated with the Committee, as well as activity associated with a slate of candidates that is qualified to accept transfers from the public fund pursuant to KRS 121A.060.

A. The following questions are presented with the understanding that the Patton-Henry for Kentucky Committee's campaign headquarters are located at a building owned and operated by the Kentucky Democratic Party ("Party"). Further, it is understood that this building also houses the headquarters for the Kentucky Democratic Party and that the space and certain materials used by the Patton-Henry for Kentucky Committee at this location are provided to the Committee at fair market value, pursuant to a legally binding lease executed between the Committee and the Party. These questions concern the activities of full-time employees of the Party ("Employees")

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and their ability to work for and assist the Patton-Henry for Kentucky Committee with various tasks.

1. If the Committee intends to send out a bulk mailing and a full time Employee possesses a particular skill, such as the ability to execute the "mail merge" function for the computer program from which the mailing will be sent, would that Employee be allowed to volunteer to execute this function on behalf of the Committee if the Employee did so on his or her own time? Would the value of this time or service constitute a "contribution" to the Committee if it exceeded \$100? Even if it did not exceed \$100?
2. If another Employee wishes to volunteer time to assist stuffing the envelopes for the mailing described above, are they permitted to do so? Would the value of this time or service constitute a "contribution" to the Committee if it exceeded \$100? Even if it did not exceed \$100?
3. If an Employee makes himself/herself available to the Committee on an "as needed" basis, and performs tasks for the Committee during hours which that Employee would normally be working for the Party, would the value of this time or service constitute a "contribution" to the Committee if it exceeded \$100? Even if it did not exceed \$100?
4. If a printer owned by the Party is being used at fair market value by the Committee and this printer is located in the common area of the building next to the receptionist's station, is that receptionist (an Employee of the Party), or another Employee working at that station, permitted to consider his or her services to be volunteer time pursuant to KRS 121.015(7)(a) if the services involve feeding Committee paper through and removing printed Committee materials from that printer? If this can be done without the Employee physically leaving their station or detracting from the value of their services to the Party would the Employee be unable to be compensated by the Party for time spent feeding paper into or removing it from the printer for the Committee? Would the value of this time or service constitute a "contribution" to the Committee if it exceeded \$100? Even if it did not exceed \$100?

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5. If a supporter of the Committee attempts to contact the Committee but is unaware of the Committee's direct phone line or separate post office box, and if this supporter either places a call to or corresponds with Party headquarters in an attempt to reach Committee headquarters and if this call is initially received by a Party Employee, or if this correspondence is initially opened and reviewed for forwarding by a Party Employee, would the value of this time or service constitute a "contribution" to the Committee if it exceeded \$100? Even if it did not exceed \$100?

6. If an Employee of the Party as a supporter of the Committee, wishes to attend a Committee event held in another town and an employee of the Committee will be attending the same event, are they allowed to travel to this event together? If the Employee of the Party drives the employee of the Committee to this Committee event, would the value of this time or service constitute a "contribution" to the Committee if it exceeded \$100? Even if it did not exceed \$100?

B. The following questions involve the use of a professional fund raiser hired full time by the Committee and this fund raiser's ability likewise to render services to the Party ("Fund Raiser").

1. If a Fund Raiser is initially hired by the Committee, is this Fund Raiser also allowed to work in an official capacity for the Party if his/her compensation is prorated between the Committee and Party for the value of time and services actually spent working for each entity?

2. If the answer above is no, is this Fund Raiser, as a full-time employee of the Committee, allowed to volunteer their own time and services to the Party?

3. If a full-time Fund Raiser is hired by the Party is this Fund Raiser allowed to volunteer their time and services to the Committee? Would the value of this time or service constitute a "contribution" to the Committee if it exceeded \$100? Even if it did not exceed \$100?

4. If the Committee hires a Fund Raiser for the sole purpose of raising funds for the primary and this Fund Raiser's employment

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with the Committee ceases after meeting the Committee's fundraising goals for the primary, after which time the Fund Raiser is hired by the Party and serves as a Fund Raiser for the Party until after the primary when he/she is once again hired by the Committee to head up the fundraising efforts for the general election and serves in this capacity until the fundraising requirements of the Committee have been met, at which time the Fund Raiser returns to the Party as a Full time Employee, is such a scenario permissible so long as during periods of employment by the Committee the Fund Raiser works only for the Committee and during periods of employment by the Party the Fund Raiser works only for the Party?

C. As you are aware, the Patton for Governor Exploratory Committee, through its Chairman, Mark D. Guilfoyle, requested an advisory opinion from the registry relative to a number questions posed in a December 30, 1998 letter. As indicated in its January 8, 1999 letter the Registry declined to issue an advisory opinion in regards to most of these questions, citing 32 KAR 2:060(2) as authority. The Registry's letter did, however, invite the Patton for Governor Exploratory Committee to meet with members of the Registry staff to discuss various hypotheticals or scenarios which may arise. In fact, such a meeting was held on January 19, 1999 at the Registry's office in Frankfort. At this meeting the Registry suggested that once an actual campaign committee was established, that certain of these questions should be re-phrased and asked again. This was done by letter dated February 1, 1999. Also at this meeting the Registry provided oral answers to some of the other scenarios presented by the Exploratory Committee. The following are to confirm our understanding of the issues addressed orally at this meeting. If our understanding is inconsistent with the position which the Registry intended to convey, please advise.

1. If a supporter, even without authorization or direction from the Committee, makes expenditures for long distance telephone calls incurred while soliciting others to support the slate, the costs of such calls would constitute a "contribution" and must be reported if the cumulative cost of such calls exceeds \$100.
2. If a supporter makes expenditures aggregating less than \$300 for food beverages, postage and the like for meetings of other supporters in a place other than the individual's home, those expenditures must be reported if they exceed \$100. The \$300 exemption is for in-home events only. Similarly, if an in-home event is hosted by a husband and wife and the costs for the

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materials listed above exceeded \$300, then this amount must be reported because the \$300 in-home exemption applies per event, not per individual. At any event, whether in-home or at some other place, non-hosting supporters will be able to bring food and other things for the benefit of the event, and so long as the value is under \$100, this will stay under the reporting requirements. In the in-home under \$300 scenario, the value of the expenditures should be recorded even if they do not exceed \$300, but not reported.

3. If a candidate or their staff, while traveling in connection with campaign activities, accepts free meals and/or lodging in the home of a supporter, the value of such meals or lodging should be recorded but does not have to be reported until that time when its cumulative value exceeds \$100. In regards to lodging and meals at a married couple's home, one night's lodging and meals may be attributed to one spouse and another night to the other spouse.

4. Time volunteered by those providing professional services to the campaign or Committee, such as legal or accounting services, can be donated without compensation by the Committee so long as such services are performed on the volunteer's own time and not on that of their employer.

5. If the provider of donated professional services described above, makes incidental expenditures in the course of rendering those donated services, such as postage, long distance tolls for telephone calls and facsimile transmission and the use of office supplies the cost of these expenditures must be reported as in-kind contributions if they exceed \$100.

6. The Registry indicated that it is possible, in light of Colorado Republican Federal Campaign Committee v. Federal Election Commission, 518 U.S. 614, 116 S. Ct. 2309 (1996), for a political party to make an independent expenditure, however, the Registry will not provide any guidance as to how this can be legally accomplished. It is also the Registry's position that the Committee should not rely on the regulations proposed by the Federal Election Commission in Federal Register Vol. 62, no. 86, clarifying the "coordination" which transforms an otherwise independent expenditure by a political party into a contribution, as a binding

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interpretation of KRS 121A.010(13).

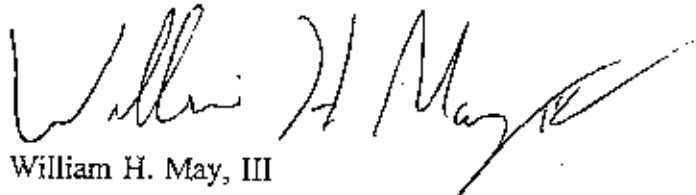
7. The Registry will prepare and issue to each campaign a memorandum of law regarding the Registry's position on "issue" advertising and the criteria by which an advertisement can qualify as an "issue" ad and therefore not a reportable contribution.

8. Anything of value which was purchased by the Patton for Governor Exploratory Committee can not simply be transferred to the Patton-Henry for Kentucky Committee but rather must be purchased by the Patton-Henry for Kentucky Committee at fair market value.

9. The Registry will attempt to officially adopt or formulate a definition of the term "knowingly" and upon doing so will issue some statement or memorandum in this regard to all candidates.

We look forward to receiving your Advisory Opinion and any clarifications you might have concerning our January 19, 1999 meeting.

Sincerely,



William H. May, III